IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-1676-2024 (O&M)
Date of decision: 15.05.2025

Wing Cdr. P.J.P. Singh Waraich (Retd.)

...Petitioner

VERSUS

National Institute of Pharmaceutical Education and Research (NIPER) and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Vikas Chatrath, Advocate;
Mr. Abhishek Singla, Advocate;
Ms. Tanya Sehgal, Advocate;
Mr. Bhanu Pratap, Advocate for the petitioner(s).

Mr. Alankrit Bhardwaj, Advocate for respondents-NIPER.

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VINOD S. BHARDWAJ, J. (Oral)

1. Aggrieved of the impugned orders dated 20.06.2023, 12.09.2023, and 27.09.2023, directing fixation of the pay of the petitioner after deducting pension as well as the consequential order of pay fixation dated 08.11.2023, which has been given retrospective effect and accompanied by an order of recovery, after a period of 14 years, the petitioner has approached this Court through the instant writ petition.

PETITIONER'S FACTS & ARGUMENTS:

2. Learned counsel appearing for the petitioner contends that the

petitioner is an Ex-Officer of the Indian Air Force. Pursuant to Advertisement No. 02/2011 issued by the National Institute of Pharmaceutical Education and Research (hereinafter referred to as 'NIPER'), the petitioner applied for the post of Registrar. His application was duly forwarded through proper channel by the Indian Air Force authorities after verification of his qualifications and experience as recorded in the Air Force service records. A Screening Committee was constituted by NIPER on 11.04.2011 to consider the applications received, including that of the petitioner. Upon evaluation, the Selection Committee found the petitioner most suitable for the said post and recommended his name.

3. In consequence of his selection and receipt of the offer of appointment, the petitioner applied for and was granted premature voluntary retirement from the Indian Air Force w.e.f. 01.07.2011 and he accordingly joined the post of Registrar at NIPER on 04.07.2011. The petitioner was offered and his basic pay was fixed after deliberations, at Rs. 43,000/- per month in the pay band (PB-4) Rs. 37,400-67,000/- with Grade Pay of Rs.10,000/- plus applicable allowances and implemented vide office order dated 06.02.2012 w.e.f. 04.07.2011 i.e. the initial date of joining and by ignoring the non-ignorable component of pension being drawn from the Indian Air Force and by treating the appointment of petitioner as a fresh appointment instead of re-employment.

4. The petitioner's pay had earlier been fixed at the above grade +

allowances, lower than as offered and by equating the petitioner as a re-employment, instead of direct recruitment and disregarding their own advertisement & appointment letter and by deducting the component of pension vide order dated 11.07.2001. Against the said action, the petitioner submitted his representation, whereupon the then Director of NIPER, vide communication dated 15.07.2011, sought the opinion of the Consultant (Internal Audit). Upon due examination of the matter, the Consultant categorically opined that the petitioner's case was not one of 're-employment' as contemplated under the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, but rather that of a fresh 'appointment' by relying on judgment of the Delhi High Court in the matter of '***E. Sreedharan Vs. Union of India***, reported as ***2009(2) AD (Delhi) 117***. Accordingly, the Consultant concluded that the provisions governing fixation of pay upon re-employment could not be applied to the petitioner, and further, that the pension drawn by him was not liable to be deducted. It was also specifically observed that the petitioner's offer of appointment had rightly used the expression 'appointment', reinforcing and re-iterating that his engagement was not a re-employment and by considering that appointments at NIPER, being an autonomous body, are neither Civil Services nor in connections with affairs of the Union Govt.

5. In view of the said opinion, it was recommended that the petitioner's pay fixation matter be placed before the next meeting of the

Board of Governors (BoG). However, the then Director accepted the observations of the Consultant (Internal Audit) and held that the petitioner's case did not require referral to the BoG. The matter underwent thorough examination between 02.08.2011 and 31.01.2012 across various levels of the administration and comments were obtained from all relevant quarters. After due deliberation, a final decision was recorded vide Note 18/N dated 31.01.2012, explicitly holding that the petitioner's case did not fall within the ambit of 're-employment'. The relevant extract of the decision reads thus:-

> *"That as per section 2 (1) of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders 1986, these orders shall apply to all persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government". Section (4) (b) further says that these orders shall not apply to persons employed in posts, expenditure of which is not debitable to the Civil Estimates of the Union Government".*
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> *That it was further deliberated/recommended that the appointments made in NIPER are neither "Civil Services not "In Connection with the affairs of the Union Government". NIPER is an autonomous body, established under an Act of the Parliament, on the patterns of IITs/IIMS. NIPER is a separate*

legal entity, governed by its own Act, Statues and Ordinances. That is the reason NIPER Board of Governors has adopted recommendations of Sixth Central pay Commission for a section of employees but adopted majority of the pay scales for faculty etc on the patters of IITs, Similarly NIPER has its own Recruitment and Promotion Rules which are not the same as meant of employees of the Central Government. It was concluded that Central Civil Services (Fixation of pay of reemployed pensioners) 1986 are not applicable to the appointments made in NIPER. Hence the pay of Sh. Waraich may be fixed as recommended by the selection committee and as per terms of his appointment. That the Finance and Accounts Officer (FA&O) while endorsing the above recommendation the also held that the employees of NIPER are Neither Civil Servants nor looking after the Affairs of the Union Government and also that the expenditure is not debitable to Civil Estimate of Union Government rather institute gets Grants-in Aid. He further, while endorsing the noting from page 16 to 18, recommended that initial pay of Rs 43000/- plus Grade Pay of Rs 10000/- may be approved as NIPER is following IIT scales of Registrar. Since his appointment is already approved by the BoG the matter need not be taken up to the BoG.

The then Director on 31.01.2012, while considering and approving the above recommendation directed that "In view of the review done by the consultants and Finance and accounts officer the proposal regarding pay fixation of registrar is approved".

***It was thus concluded that the case of the petitioner was not of re-employment but appointment on direct recruitment and the pay was fixed at the minimum of the scale offered in the appointment letter by ignoring the pension being drawn by the petitioner*.**"

6. In light of the foregoing, the pay of the petitioner was duly-properly fixed at ₹43,000/- together with applicable allowances with effect from the date of his joining the respondent-Institute. Subsequently, the respondent-authority also issued Office Order dated 06.02.2012, formally approving the said pay fixation. It has been urged that the said order was passed by the then Director, who was the competent authority to take such a decision in terms of Section 16(2) of the National Institute of Pharmaceutical Education and Research Act, 1998, he being the Principal Executive Officer of the Institute.

7. It has been further contended that during the aforesaid proceedings, the appointment of the petitioner itself came to be challenged in CWP No.6458 of 2012, titled **Parikshit Bansal and another vs. Union of India**

and others, wherein the Hon'ble Court, vide order dated 30.11.2012, was pleased to set aside the petitioner's appointment.

8. Thereafter, two separate Letters Patent Appeals were preferred against the judgment of the learned Single Judge dated 30.11.2012. One such appeal, being LPA No. 2094 of 2012, was preferred by the petitioner, titled ***P.J.P. Singh Waraich v. Parikshit Bansal and others***, while the other, being LPA No. 2106 of 2012, was filed by the respondent-Institute, titled ***National Institute of Pharmaceutical Education and Research v. Parikshit Bansal and others***. After onsideration of the pleas raised therein, this Hon'ble Court, vide separate interim orders of even date i.e., 17.12.2012, was pleased to stay the operation of the judgment passed by the learned Single Judge. The said interim protection remained operative throughout the pendency of the Letters Patent Appeals.

9. Learned counsel appearing on behalf of the petitioner has further contended that the aforesaid LPA No. 2094 of 2012 ***PJP Singh Waraich*** (Supra) was ultimately allowed by the Division Bench of this Court vide a detailed judgment dated 03.05.2023. By virtue of the said judgment, the appointment of the petitioner was upheld, thereby restoring his legal status and entitlements in accordance with law. The operative part thereof reads thus:-

> *"77. Since we now hold that the appointment of the appellant initially on 04.07.2011 was valid and legal, and we also hold*

that the order passed on 12.04.2017 regularizing the service of the appellant as Registrar w.e.f. 04.07.2011 is valid, and that his subsequent relieving orders on 31.07.2018, and 03.02.2021 are both invalid, we direct the respondent 3 and 4 to reinstate the appellant into service within 4 weeks with all consequential benefits and treat him as having been regularly appointed. The respondents No.1 and 2 shall also pay costs of Rs.20,000/- each to the appellant within 4 weeks. LPA is allowed accordingly."

10. Learned counsel appearing on behalf of the petitioner has further submitted that his LPA No. 2094 of 2012 having been allowed with all consequential benefits, the petitioner ought to be treated as a regularly appointed employee and thus entitled to all service-related benefits, including the payment of arrears as per the pay scale applicable to the post of Registrar. It is further submitted that the Special Leave Petition preferred against the said judgment of the Division Bench was dismissed by the Hon'ble Supreme Court, thereby rendering the judgment of the Division Bench final and binding.

11. It has also been contended that during the pendency of the said LPA, the original writ petitioners—namely, Dr. Parikshit Bansal and Neeraj Kumar—had moved CM No. 3146 of 2016 in LPA-2094-2012 seeking modification of the stay order dated 17.12.2012 passed by the Division

Bench. They had alleged that since the petitioner's contractual term had ended on 03.07.2016, he ought not to be permitted to continue in service under the umbrella of the said interim protection. The Division Bench, vide order dated 20.07.2018, clarified that the interim order dated 17.12.2012 had become redundant in view of the fact that the petitioner's services had, in the meantime, been regularised. Accordingly, it was observed that the stay order was no longer in operation. The relevant part of order dated 20.07.2018 reads thus:-

> *"This application is filed by the respondent for seeking modification of order dated 17.12.2012 by which order of the learned Single Judge was stayed. It is not in dispute that the applicant was appointed on contract basis for 5 years to the post of Registrar of NIPER w.e.f. 04.07.2011. Admittedly, the said period has already elapsed and with the efflux of time the order of stay of the operation of the order of the learned Single Judge, has come to an end. However, learned counsel for the non-applicant/appellant has submitted that during the pendency of the LPA, the services of the petitioner on the said post has been regularized on 12.04.2017. The learned counsel appearing on behalf of the applicant/respondent has informed the Court that even the order of the regularization is under challenge in writ petition No.262 of 2017 which is now pending for*

03.08.2018. Be that as it may so far as the stay in the present case is concerned, it has already become redundant, therefore, the application is allowed and it is clarified that the order dated 17.12.2012 is no more in operation."

12. Learned counsel for the petitioner further contends that, notwithstanding the clarification rendered by the Division Bench vide order dated 20.07.2018, the respondent-NIPER erroneously construed the said order as a direction vacating the interim protection earlier granted on 17.12.2012. Acting under such misapprehension, the respondent issued a relieving order dated 31.07.2018, thereby relieving the petitioner from service solely on the basis that the interim order stood vacated notwithstanding that his regularisation order was a pivotal consideration for the said order.

13. It is the petitioner's submission that such an act of relieving him from service was wholly misconceived and unsustainable in law, especially in light of the fact that the clarification dated 20.07.2018 was issued only in LPA No. 2094 of 2012, preferred by the petitioner, and not in LPA No. 2106 of 2012, which had been filed by the respondent-NIPER. The interim protection granted vide order dated 17.12.2012, thus, continued to subsist in his favour in LPA No. 2106 of 2012. The petitioner preferred an appeal against the said relieving order before the Board of Governors (BoG) of NIPER. In the meantime, however, NIPER itself chose to withdraw its LPA

No. 2106 of 2012 on 22.05.2019, citing the reason that the petitioner had since already been relieved on 31.07.2018.

14. The BoG, however, upon consideration of his appeal, held that the action of relieving the petitioner on 31.07.2018 was improper inasmuch as the interim stay order in LPA No. 2106 of 2012 had remained in force until 22.05.2019. Therefore, no decision with respect to relieving the petitioner could have been taken prior to that date, and even thereafter, any such step was required to be undertaken strictly in accordance with the procedure prescribed under the Central Civil Services (Classification, Control and Appeal) Rules, which govern regular employees of the institution.

15. In compliance with the decision of the Board of Governors (BoG), the petitioner submitted his joining report and sent multiple reminders to the respondent-NIPER. However, despite such efforts, the petitioner was not permitted to resume his duties. On the contrary, the respondents compelled the petitioner to vacate the official accommodation that had been allotted to him within the NIPER campus. Subsequently, the Department of Pharmaceuticals, vide communication dated 12.01.2021, issued specific directions to the effect that the relieving order dated 31.07.2018, which had been passed by the then Director of the Institute to relieve the petitioner from his duties as Registrar, was legally invalid in view of the subsisting stay granted by the Court. The Department thus directed the

issuance of a fresh revised relieving order with effect from 22.05.2019, being the date on which the LPA filed by the respondent-NIPER was withdrawn. Pursuant thereto, a revised relieving order dated 21.02.2021 was issued to the petitioner, altering the effective date of relieving from 31.07.2018 to 22.05.2019.

16. Eventually, vide judgment dated 03.05.2023, LPA No. 2094 of 2012 preferred by the petitioner was allowed by the Division Bench of this Court, thereby upholding the petitioner's appointment as valid and legal. The relieving orders dated 31.07.2018 and 21.02.2021 w.e.f. 22.05.2019 were declared invalid. The respondent-NIPER was directed to reinstate the petitioner in service with all consequential benefits within a period of four weeks. The operative part of the directions has already been extracted above.

17. It is submitted that in compliance with the aforesaid judgment dated 03.05.2023, the petitioner submitted his joining on 04.05.2023 and simultaneously requested for the release of all consequential benefits as directed therein. However, there was an inordinate delay in effectuating the same. The administration of NIPER thereafter initiated the process for disbursal of arrears payable to the petitioner in terms of the said judgment. The proposal in that regard was duly routed through the Finance and Accounts section for concurrence and vetting. The relevant extract of noting sheet dated 18.05.2023 reads thus:-

"*xxxxxxx*

As per the Para-77 of the aforesaid court judgment dated 03.05.2023 (CP-995-996) reinstatement of Wing Cdr. PJP Singh Waraich (Retd.) as Registrar of this Institute is as having been regularly appointed with all consequential benefits Accordingly, his pay fixation has been worked out as under:-

Pay as on 22.05.2019 i.e. on the date of relieving vide Order dated 03.02.2021 (CP 1025-1026);

Date	*Pay details*		
	Pay	*Cell No.*	*Basic Pay*
22.05.2019	*14*	*7*	*Rs.1,72,200/-*

Details of Annual Increments to be granted to Shri Waraich are as under:-

Date of Annual Increment	*Pay details*		
	Pay	*Cell No.*	*Basic Pay*
01.07.2019	*14*	*8*	*Rs.1,77,400/-*
01.07.2020	*14*	*9*	*Rs.1,82,700/-*
01.07.2021	*14*	*10*	*Rs.1,88,200/-*
01.07.2022	*14*	*11*	*Rs.1,93,800/-*
DNI:01.07.2023			

Accordingly, pay and other allowances to be released to Shri Waraich is as under:-

From	To	Pay details			Remarks
		Pay Level	Cell No.	Basic Pay	
23.05.2019	30.06.2019	14	7	Rs.1,72,200/-	As on 22.05.2019
01.07.2019	30.06.2020	14	8	Rs.1,77,400/-	Annual Increment
01.07.2020	30.06.2021	14	9	Rs.1,82,700/-	Annual Increment
01.07.2021	30.06.2022	14	10	Rs.1,88,200/-	Annual Increment
01.07.2022	30.06.2023	14	11	Rs.1,93,800/-	Annual Increment
	DNI: 01.07.2023				

Further, HRA is also admissible to Shri Waraich w.e.f. 16.09.2022 till the date of possession of campus accommodation, as campus accommodation was vacated by the office from Shri Waraich on 16.09.2022 as communicated by Engineering Section vide e-mail dated 16.09.2022 (CP-1029). Before sending the proposal to the Competent Authority le. Director, NIPER-SAS Nagar, the same may be forwarded to Finance & Accounts Section for concurrence of proposal and necessary vetting at their end.

Submitted please.

Sd/-

SO(A)

Kindly refer noting at pre-page. In compliance of Hon'ble Court of Punjab & Haryana Judgment dated 03.05.2023 in PA 2014 of 2012 Vide which Hon'ble Court directs to reinstate Sh. Waraich with all consequential benefits his joining was accepted w.e.f. 04-05-2023 as Registrar of the Institute as having been regularly appointed with all consequential benefits. Accordingly, his Pay fixation has been worked out at pre-page Further, his campus accommodation was vacated on 16-09-2022, hence HRA is also admissible to him from 16-09-2022 till the date at possession of Campus accommodation.

Accordingly, the same is submitted for kind perusal. Before sending the proposal to the competent authority for approval, the same may be forwarded to FSA Section for necessary Vetting at their end.

Submitted please.

xxxx

Kindly refer noting on pre-page (NP-100) and above noting. In view of x' above, calculation sheet made at pre page w.r.t. pay of Wing Cdr PJP Singh Waraich. Registrar in *endorsed and may be forwarded to F&A Section for concurrence and vetting at their end.*

xxx"

18. It is submitted that the respondents sought various clarifications, and the Director, even provisionally, released the petitioner's salary and allowances, including increments, vide noting sheet dated 31.05.2023. The petitioner's pay was accordingly fixed by office order of the same date. It is contended that by order dated 20.06.2023, the consequential benefits for the period from 23.05.2019 to 03.05.2023 were released to the petitioner; however, an approximate non- ignorant component of pension, amounting to Rs.49,250/-, was withheld monthly from his pay, on an adhoc basis, as per the fixation table provided in the said order dated 31.05.2023. This withholding was to continue until finalization of the case by the Department of Pension (DoP). The respondent-NIPER has relied upon memo No. 51020/1/2023-NIPER-Part (2) (FTS-24523) dated 12.09.2023 to justify recoveries effected from the petitioner on the ground that pay fixation was to be carried out after deducting pension, if any, in accordance with DoP instructions. The operative part thereof reads thus:-

"Subject: Pay fixation of Wing Cdr. PJP Singh Waraich (Retd.) on resumption of duties as Registrar of the institute - Regarding.

Sir,

I am directed to refer to your letter dated 19.06.2023 on the subject mentioned above and to say that the NIPER Council in its meeting held on 28.02.2023, after detailed deliberations, had unanimously decided that:

> *"the Pay of Directors, NIPERs has to be fixed deducting pension, if any, in accordance with DoP&T's instructions. Further, past cases, where the incumbents have drawn dual benefit, be reviewed, so as to bring in conformity with government instructions, and recoveries, if any, to be effected with retrospective effect."*

2. The matter has been examined and it has been decided with the approval of the Hon'ble Minister for Chemicals & Fertilizers that the said decision of the Council be implemented/extended in the case of Registrar and other employees of NIPERs.

3. It is requested that an Action Taken Report in the matter be furnished to the department."

19. Learned counsel appearing on behalf of the petitioner contends that the Ministry of Chemicals & Fertilizers, Department of Pharmaceuticals, had moved CM-17900-2024 seeking deletion of its name on the ground that it had no role in the matter. He submits that once the Department of Pharmaceuticals itself disclaims any involvement, the said communication relied upon by the respondents for deducting pension from

the petitioner's salary and effecting recoveries cannot be sustained. Consequently, the respondents' reliance on such communication to justify pension deduction and recoveries is wholly misplaced and is without any legal basis.

20. Learned counsel further contends that the petitioner was also approved a transport allowance @ Rs.7,000/- along with Dearness Allowance, which falls within the definition of admissible allowances. Consequently, the same ought to be released as a part of the consequential benefits already granted by the Division Bench, inclusive of all benefits under the personal promotion scheme.

ARGUMENTS BY RESPONDENTS:

21. Learned counsel appearing on behalf of the respondent(s) does not dispute the aforementioned facts and submits that the proposal for fixation of the petitioner's pay was approved by the then Director, pursuant to which the office order dated 06.02.2012 was issued fixing the petitioner's pay at Rs. 43,000/- per month in the pay band (PB-4). The petitioner was allowed to draw full salary without any deduction of pension being drawn by him from his earlier employer, the Indian Air Force.

22. It is further submitted that after the Division Bench's decision in favor of the petitioner, the matter was deliberated by the Board of Governors (BoG) and, with the consent of the Ministry, the petitioner was permitted to resume duties. Subsequently, the NIPER received

communication dated 28.02.2023 from the Ministry concerning pay fixation for Directors re-employed after retirement at NIPER. As this communication related specifically to Directors, the authorities sought clarifications from the Parent Ministry vide letter dated 19.06.2023 regarding the applicability of such instructions to the Registrar as well.

23. In response, the Ministry clarified vide letter dated 12.09.2023 that the said decision applied equally to the petitioner and other employees of the Institute. Consequently, the petitioner's pay was provisionally re-fixed, deducting the non-ignorable component of pension amounting to Rs. 49,250/-. Hence, an amount of Rs. 23,78,298/- was rightly withheld from the petitioner's pay for the period from 22.05.2019 to 31.05.2023 pursuant to such re-fixation and deduction.

<u>CONSIDERATION</u>:

24. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

25. The core question for consideration before this Court is whether, notwithstanding the directions issued by this Court for reinstatement of the petitioner along with all consequential benefits, the respondents still possessed the competence to re-fix the petitioner's salary, lower than that which had already been approved by the competent authority.

26. While the respondents have specifically relied upon the clarification issued by the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers, it is noteworthy that the said Ministry itself filed an application bearing CM-17900-2024, asserting that it has no concern with the matter and seeking deletion of its name from the array of respondents. This contradiction raises serious doubts regarding the validity and applicability of the Ministry's purported clarification relied upon by the respondents to justify the re-fixation and deductions especially when the Ministry itself distances itself from any directives and leaves it entirely to the respondents to defend their action and decisions.

27. On a pointed query put to the counsel for the respondent(s), it was not disputed that the fixation of pay falls within the sole competence of the Director. Further, it is also not contested that the question as to whether the non-ignorable component of pension ought to be deducted from the petitioner's payable salary or not had also been deliberated upon at the time of issuance of the appointment letter. The matter was examined thoroughly on all aspects including considerations on whether the petitioner's engagement amounted to re-employment or fresh appointment, and the pay was fixed accordingly by taking a decision that the pension could not be deducted.

28. It was also submitted that the Director, as the competent Drawing and Disbursing Officer, validly exercised his authority in fixing the

petitioner's pay at the relevant time. The circumstances necessitating a re-determination of pay and recovery from the petitioner arose solely from a communication received from the respondent-Ministry and not for any other reason.

29. It is further to be noted that the respondent-Institute is an autonomous body. Given that the Ministry itself has sought to distance itself from the affairs of the respondent-Institute, it cannot be contended by the respondents that notwithstanding the Institute's independent autonomous authority over financial expenditures, the pay of the petitioner is now being sought to be re-fixed solely on the directives or clarifications received from the Ministry.

30. A specific query was also put to the counsel for the respondent(s) regarding the competence of the Ministry to issue any rulings or instructions with respect to the decisions to be taken by the competent authority of NIPER. The counsel was unable to cite any statutory provision or rule under which prior approval or sanction from the Ministry was/is required for the payment of arrears, once the same has already been approved by the competent body of NIPER.

31. The counsel is also unable to dispute that at no stage, when the terms and conditions of the petitioner's employment were agreed upon, was there any exclusion or deduction of pensionary benefits from the salary payable to him. Moreover, the role of the Ministry was neither invoked

nor considered necessary at that time. Therefore, once the Division Bench of this Court directed the respondents to grant all consequential benefits to the petitioner, upon allowing his LPA, there was no lawful basis or occasion for NIPER to seek or await any fresh opinion or advisory from the Ministry for compliance of the order of the Division Bench.

32. It appears that NIPER has resorted to an impermissible and novel approach to evade its statutory and enforceable judicial obligations by invoking the Ministry's advisory as a pretext to withhold the petitioner's rightful benefits. Such conduct amounts to an attempt to circumvent a binding order of this Court, which expressly mandates the payment of all consequential benefits to the petitioner. Such an approach to deny dues cannot be countenanced by this Court and is thus liable to be rejected.

33. It is a well-established legal principle that the appointment letter constitutes binding contractual agreement between the parties. Once such an enforceable contract of engagement is in place, no party would be in a position to unilaterally alter the terms and conditions thereof. Any modification to the agreed terms of the contract must be effected in strict adherence to with the prescribed legal procedure and/or with the mutual consent of both parties. In the instant matter, the respondents have failed to follow any lawful or agreed-upon procedure to alter the terms of the petitioner's employment contract. Consequently, any such unilateral change imposed by the respondents is invalid and unenforceable in law. Reference in this regard can be made to the judgment passed by the ***Delhi High Court*** in the matter of '***E. Sreedharan Vs. Union of India***, reported as ***2009(2) AD (Delhi) 117***. The relevant extract thereof reads thus:-

> *"30. For the forgoing reasons the inevitable inference is that the petitioner's appointment as CMD of an independent Corporation was not re-employment in Civil Services or on a post in connection with the affairs of the Union Government. The petitioner was `Appointed' to the post of CMD of the Respondent no.4 and his salary was fixed as Rs.9000-10000 and the amount of pension which was received by the petitioner was not deductable from his salary. Consequently all the amounts which have been deducted by the respondents from the salary of the petitioner were illegal and the respondents are liable to refund all the amounts to the petitioner."*

34. Reliance can also be placed on the judgment of a ***Division Bench*** of the ***Uttarakhand High Court*** in the matter of '***Lt. Gen. (Retd.) Dr. M.C. Bhandari*** Vs. ***State of Uttarakhand and others'*** reported as ***2010 (29) SCT 163***. The relevant extract thereof reads thus:-

> *"10. We have considered the second contention advanced by the learned counsel for the petitioner. There can be no doubt whatsoever that pensionery emoluments payable to*

the petitioner were in lieu of the service rendered by him with the Indian Army. The same is, therefore, unrelatable to the service rendered by the petitioner as a Chairman of the Uttarakhand Public Service Commission. It is also not a matter of dispute, that while functioning as the Chairman of the Uttarakhand Public Service Commission, the petitioner has been rendering all the duties and responsibilities expected of a person holding that assignment. As such, there being neither any reduction in hours of service, nor the responsibilities vested in him in the capacity of Chairman of the Public Service Commission. His emoluments as Chairman of the Public Service Commission were originally determined under Regulation 7 (1) of the 2004 Regulations at Rs. 26,000/- per mensem. Since the petitioner was rendering all the duties and responsibilities of the post of Chairman of the Uttarakhand Public Service Commission, there could have been no deduction in his emoluments. By the impugned order dated 16.9.2008, his monthly remuneration was reduced by a sum equal to the monthly pension being drawn by him. It is this deduction from his remuneration, that is subject matter of challenge through the instant writ petition. Since the aforesaid deduction has been based on Regulation 7(2) of the 2004 Regulations, the *petitioner has challenged the constitutional validity of the aforesaid regulation as well. A deduction based on factors alien to the principle of "equal pay for equal work" would be violative of the provisions of Article 14 read with Article 39 (d) of the Constitution of India. Deduction from the salary of Rs. 26,000/-, of the amount of pensionery emoluments earned by the petitioner, in lieu of service rendered by him with the Indian Army, in our view, has no nexus to the duties and responsibilities vested in the petitioner, as Chairman of the Public Service Commission, and as such, must be deemed to be contrary to the principle of "equal pay for equal work" and in complete derogation thereof. The decision rendered in Ram Phal's case (supra) was also to this pointed effect. We accordingly express our approval to the ratio laid down, on the issue in hand, in Ram Phal's case (supra). For the same reasons as had weighed in Ram Phal's case (supra), we are satisfied that Regulation 7 (2) of the 2004 Regulations is liable to be held as ultra vires Article 14 read with Article 39 (d) of the Constitution of India. Accordingly, Regulation 7(2) of the 2004 Regulation is hereby quashed, being ultra vires the provisions of the Constitution of India.*

11. It would be unfair to the learned counsel for the

State Government, if we do not take into consideration two submissions advanced by him while opposing the second submission advanced by the learned counsel for the petitioner. Firstly, it was contended by the learned counsel, that the instant writ petition came to be filed belatedly in the year, 2008, just a month before the petitioner was required to relinquish his duties as Chairman of the Uttarakhand Public Service Commission. Secondly, it is submitted that the 2004 Regulations were validly framed by the Governor of the State of Uttarakhand in exercise of powers conferred on him under Article 318 of the Constitution of India, and as such, there can be no justification whatsoever to treat the same as ultra vires of the provisions of the Constitution of India.

12. We have considered both the submissions advanced by the learned counsel for the State Government, as have been noticed in the foregoing paragraph. We have noticed hereinabove, while narrating the facts, that the petitioner came to be inducted as a Chairman of the Uttarakhand Public Service Commission, as a consequence of an order passed by the State Government on 3.11.2006. At the time of his appointment as Chairman of the Public Service Commission, his emoluments were fixed in terms of Regulation 7 (1) of the 2004 Regulations. As such, the petitioner was not aggrieved *with the determination of the emoluments payable to him. The grievance of the petitioner arose only when the emoluments payable to him under Regulation 7 (1) of the 2004 Regulations were reduced by a sum equal to the amount of pension received by him. This order was purportedly passed by the State Government on 16.9.2008, under Regulation 7(2) of the 2004 Regulations. It is, therefore, apparent that the cause of action arose to the petitioner for the first time on 16.9.2008 and as such, the present writ petition, which was filed by the petitioner in 2008 cannot be considered to be belated in any manner whatsoever.*

13. Insofar as the second submission advanced by the learned counsel for the State is concerned, there can be no doubt, that the Regulations of 2004 were framed in exercise of the powers vested in the Governor under Article 318 of the Constitution of India. However, no regulations can be framed, which are violative of any other provision of the Constitution of India, more so the fundamental rights enshrined in Part-III of the Constitution of India. The principle of "equal pay for equal work" has been culled out by the Apex Court on the basis of Article 14 read with Article 39 (d) of the Constitution of India. This principle applies to every employee, who receives remuneration at the hands of the Government. The Chairman of

Public Service Commission is entitled to the protection flowing out of the aforesaid principle. As such, Regulation 7(2) of the 2004 Regulations, which has been held to be vioative of the aforesaid principle was liable to be set aside as the same was ultra vires the provision of the Constitution of India. As such, we find no merit even in the second submission advanced at the hands of the learned counsel for the State.

14. For the reasons recorded hereinabove, the impugned order dated 16.9.2008 is hereby set aside. Regulation 7(2)of the 2004 Regulations is also set aside, as being ultra vires the provisions of Article 14 read with Article 39 (d) of the Constitution of India. The instant writ petition is, accordingly, allowed in the aforesaid terms.

15. In case any deduction was made from the emoluments payable to the petitioner as Chairman of the Uttarakhand Public Service Commission on the basis of communication dated 16.9.2008 or under Regulation 7 (2) of the 2004 Regulations, the same shall be calculated and reimbursed to the petitioner within two months from the date of receipt of a certified copy of this order."

35. Reliance can also be placed on the judgment of this Court in ***Amit Kumar Chakraborty v. Haryana Power Generation Corporation Ltd. and others***, reported as **2024 NCPHHC 14268**. The principle enunciated

therein is that once the terms and conditions of employment have been finalized and accepted by the contracting parties, thereby attaining finality, no successor authority can unilaterally alter or modify those agreed terms without following due process of law or obtaining consent. This Court held that such unilateral variation, without adherence to the contractual or statutory framework, is impermissible and liable to be set aside. The ratio of this judgment squarely applies to the present case and militates against the respondents' attempts to re-fix the pay and deny the petitioner his rightful dues. The relevant extract thereof reads thus:-

> *"12. Therefore, in this view of the matter, the said five advance increments granted to the petitioner are required to be considered as his personal pay. Further, once the said benefit was granted after the approval was accorded by the Board of Directors, the said benefit cannot be withdrawn by the Chief Engineer as it is well-settled proposition of law that even successor in office cannot review the order passed by the predecessor. Reference can be made to the Division Bench Judgment of this Court in Sarv Mittar Sharma, Special Secy., Punjab and Haryana High Court v. Punjab and Haryana High Court, Chandigarh through its Registrar, 1992(3) SCT 392. Although, at one point of time a sum of Rs.2,43,037/- was recovered from the retiral benefits of the petitioner on his*

retirement and thereafter after issuance of show-cause notice to the petitioner, to which he submitted his reply and after considering the comments of the Chief Engineer, the sum was refunded back to the petitioner vide memo dated 06.07.2015 (Annexure P-17). The said benefit was granted to the petitioner vide order dated 02.04.1992 (Annexure P-4) with effect from 03.08.1990 and the said benefit cannot be withdrawn from the petitioner or cannot be treated in any other manner to his dis-advantage especially when no mis-representation or fraud was committed by the petitioner."

36. Further reference can also be made to the Division Bench judgment of this Court in ***Sanjay Gulati v. State of Haryana*****, CWP-10522-1999**, decided on **07.02.2002**, wherein it was unequivocally held that once the rights of the parties have been judicially settled, such rights cannot be disturbed or unsettled by executive action. The Court emphasized that the executive cannot, by way of administrative orders or instructions, unsettle or override a right which has attained finality through judicial determination. This principle reinforces the settled legal position that final judicial pronouncements must be respected and implemented in good faith by the authorities concerned. The present case squarely falls within this settled position of law, and the respondents cannot, therefore, unilaterally alter or deny the petitioner's rights post judicial determination. The relevant

extract thereof reads thus:-

> *"3. The short question that arises for consideration before this court is whether the respondents were justified in directing the recovery after the rights of the parties were fully determined vide judgment of Division Bench dated 12th March, 1997. There can be no other answer to the question afore-stated than in the negative. The rights of the parties were determined by the Division Bench of this Court. The said judgment became final, as it was not assailed by the respondents before the Hon'ble Apex Court by way of filing Special Leave Petition. Even if the principle enunciated was varied, the settled righis of the parties could not be disturbed except by filing proper review application or taking up the judgment of the Division Bench in appeal before the Hon'ble Apex Court. Admittedly, none of these remedies were invoked by the State. Settled right could not be unsettled by the respondents unilaterally and that too without affording an opportunity of hearing to the petitioner.*
>
> *4. Learned counsel for the petitioner relies upon the judgment of Hon'ble Apex Court in the case of T.R. Dhananjaya v. J. Vasudevan, 1995(4) Recent Services Judgments 490 to contend that in fact the respondents have committed contempt*

by not adhering to the said orders. There is merit in the submissions, but we are not concerned with this contention, as no contempt application is pending before this Bench. However, in view of the principle enunciated in T.R. Dhananjaya's case (supra), we allow this writ petition. The impugned order dated 30.6.1999, Annexure P/3 is set aside, leaving the parties to bear their own costs."

37. It thus emerges from a careful perusal of the foregoing that any unilateral alteration or reduction of the arrears payable to the petitioner, including allowances such as transport allowance, benefits under the personal promotion scheme, and refund of post-retirement medical facilities, is impermissible. These terms were initially agreed upon between the parties and have been duly accepted by the petitioner and crystallized through judicial and administrative processes. Consequently, the respondents cannot lawfully deviate from these established entitlements or diminish the petitioner's rightful dues contrary to the binding terms of engagement. Any such act would amount to a dilution of the effect of the judgment already rendered by the Division Bench of this Court, which is unacceptable and beyond the authority and competence of the Executive Authorities. The petitioner having been held entitled to all consequential benefits alongwith re-instatement gets a right to reclaim the benefits that existed and accrued in his favour on the day of the alleged wrong and to the benefits that are essentially and integrally linked to the same. There cannot be a post

judgment dissection for denial of the accrued benefits, save with the authority of the Court. Since none of the said circumstances exist, the acts of the respondent do not have the protection of the laws. Consequently, the impugned orders dated 20.06.2023, 12.09.2023, 27.09.2023, as well as the order dated 08.11.2023, stand **set aside**. The writ petition is accordingly **allowed**.

38. The respondents are hereby directed to compute and release the benefits as were originally admissible to the petitioner, in terms of the letter of appointment, along with all consequential benefits as awarded by the Division Bench in its judgment dated 03.05.2023 passed in LPA-2094-2012. Such payment be made within a period of three months from the receipt of a certified copy of this order. In the event of failure to comply within the stipulated time, the petitioner shall be entitled to interest at the rate of six percent per annum from the expiry of the aforesaid period until actual disbursement.

(VINOD S. BHARDWAJ)
JUDGE

15.05.2025
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No